IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1163 of 2006

Baby Ravi .. Petitioner

Vs.

1. The Home Secretary,
   Secretariat, Fort St. George,
   Chennai.

2. The Director General of Police,
   Tamil Nadu Police Head Quarters,
   Kamarajar Salai, Chennai.

3. The Inspector General of Police,
   Trichy Region, Trichy.

4. The Inspector of Police,
   Thiruvarur Town Police Station,
   Thiruvarur Town.

5. The Inspector of Police,
   Kumbakonam Ease Police Station,
   Kumbakonam.

6. Vellaithurai,
   Deputy Superintendent of Police,
   Anti Rowdy Cell, Trichy Region,
   I.G. Office, Trichy.

7. Sethumanimathavan
   Sub Inspector of Police,
   Anti Rowdy Cell, I.G. Office,
   Trichy Region, Trichy. .. Respondents

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus to direct respondents 1 and 2 to produce the body of P.Ravi, who is in illegal custody of the 5th to 7th respondents herein before this Court and set him at liberty on his own bond.

For Petitioner : Mr.R.Sankarasubbu
for Mr.T.P.Senthilkumar

For Respondents : Mr.N.R.Elango
Addl.Public Prosecutor/RR1 to 5
: Ms.A.Madhumathi for R-6 and R-7

O R D E R

(Order of the Court was made by P.D.DINAKARAN, J.)

The petitioner is the wife of the detenu, by name P.Ravi, who is a social worker and Organising Secretary of "Tamilar Thanmana Peravai". According to the petitioner, the detenu/her husband was objecting to the brutal custodial murder of one Dhanasekaran on 1.11.2001 at the Thiruvarur Police Station and also sought transfer of investigation of the case to C.B.I. It is further stated that the police authorities, prejudiced by the objections raised by the detenu, foisted several false cases against him and subsequently, when he was complying with the conditions imposed to appear before the fourth respondent twice daily at 8.30 a.m. and 7.30 p.m., while granting bail by this Court by order dated 31.7.2006 in Crl.O.P.No.13221 of 2006, the detenu was again taken into illegal custody by respondents 5 to 7 on 26.10.2006 and was beaten by them brutally with iron rods, as a result, his right leg was broken and there were also multiple fractures on his right leg, which necessitated the petitioner to move the above Habeas Corpus Petition.

WEB COPY

2. This Court, by orders dated 29.11.2006, 1.12.2006, 5.12.2006, 8.12.2006, 10.1.2007 and 24.1.2007 passed interim directions by directing the respondents police to give all necessary medical treatments to the detenu in the Government Hospital as well as in the Apollo Hospital. It is not in dispute that the detenu had satisfactory treatment in the hospitals.

https://hcservices.ecourts.gov.in/hcservices/

3. But, according to the learned Additional Public Prosecutor, on 26.10.2006, when the fifth respondent chased the detenu to arrest him in connection with Crime No.618 of 2006 on the file of the 5th respondent police, the detenu crossed a railway track, fell down and suffered fracture. Thereafter, the fifth respondent police arrested him. Of course, this submission of the learned Additional Public Prosecutor is strongly disputed by Mr.R.Sankarasubbu, learned counsel appearing for the petitioner. Be that be. Concededly, the detenu was released on bail on 2.1.2007 by an order of the learned Judicial Magistrate, Kumbakonam and from then onwards, the detenu was no more in the prison nor he was under the illegal custody of the respondents police. Strictly speaking, by such release, this petition for Writ of Habeas Corpus had become infructuous. But, the story did not come to an end with that.

4. Taking note of the very serious allegation made by Mr.R.Sankarasubbu, learned counsel for the petitioner, particularly the apprehension of the detenu that respondents 5 to 7 attempted an encounter against the detenu on 26.10.2006, this Court, by order dated 25.1.2007, felt it just and proper to direct the learned District Judge, Nagapattinam, to hold an enquiry and submit a report in this regard. At this juncture, it would be more appropriate to refer the said order of this Court dated 25.1.2007, which reads as follows:-

" Heard the learned counsel appearing for the parties.

2. The detenu is present in Court. We have requested the doctor available in the High Court premises to examine him. From the report of the doctor it appears that even though there is no external injury, there is swelling on the middle and lower one third of the left leg. There is healed surgical scars in the operated area. He has also stated that there is pain and loss of sensation in the middle and lower one third of the left leg. As per the opinion doctor, physiotherapy and rest is advisable and similarly there is necessity of elastro crepe bandage. Obviously, these matters would be considered by the doctor in-charge in the Government Hospital. It is open to the hospital authority to take whatever steps are required and to discharge the detenu if in their opinion the detenu has to be discharged.

3. Keeping in view of the contentions raised in the Habeas Corpus Petition and the submissions which have been made on behalf of the State, we feel it is necessary in the interest of justice an enquiry shall be held by the District and Sessions Judge, Nagapattinam. The detenu shall appear before such District and Sessions Judge on 7.2.2007 on which date the District and Sessions Judge shall fix a convenient date for enquiry.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The registry is directed to send a copy of this order along with xerox copy of the Habeas Corpus Petition, counter affidavit and all other relevant documents to the District and Sessions Judge to facilitate the enquiry. The report should be furnished by 7th March 2007 and this matter shall be listed for hearing on 12th March 2007.

5. The medical records which are given by the hospital will be also sent to the District and Sessions Judge, Nagapattinam.

6. The detenu shall report before the hospital authorities today."

5. Accordingly, in compliance of the directions of this Court, learned District and Sessions Judge, Nagapattinam, held an enquiry and submitted a detailed report dated 16.3.2007 rendering a finding as follows:-

"15. In my opinion the version given by the detenu regarding the manner in which he sustained injuries by an act of force upon him by Vellaidurai and Sethumanimadavan does not appear to be convincing. The report is accordingly submitted as directed by the Hon'ble High Court."

The copy of the above said report dated 16.3.2007 is also furnished to both the petitioner and the respondents. The said enquiry report dated 16.3.2007 also contains the annexures, viz., Judges Notes and other Miscellaneous Papers, Statement of witnesses and documents produced on the side of the petitioner and Statement of witnesses and documents produced on the side of the respondents.

6. According to Mr.R.Sankarasubbu, learned counsel for the petitioner, the learned District and Sessions Judge, Nagapattinam, has not permitted the detenu to cross-examine the witnesses examined by the enquiry officer and therefore, the learned Judge, ought not to have rendered a finding to the effect that the version given by the detenu regarding the manner in which he sustained injuries by an act of force upon him by respondents 6 and 7, namely, Vellaidurai and Sethumanimadavan does not appear to be convincing. Mr.R.Sankarasubbu, learned counsel, furhter contends that since apparently the detenu sustained grievous injuries and was given treatment, he is entitled for compensation in the above Habeas Corpus Petition.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. It is true, in appropriate cases, this Court, exercising the power conferred under Article 226 of the Constitution of India, can award compensation in the case of injuries sustained by the detenu while in custody, provided if the Court is satisfied with the substantial materials available in that regard. But, unfortunately, in the instant case, this Court having ordered for an enquiry by the learned District and Sessions Judge, Nagapattinam and the learned Judge having rendered a finding in the report dated 16.3.2007 to the effect that the version given by the detenu regarding the manner in which he sustained injuries by an act of force upon him by Vellaidurai and Sethumanimadavan does not appear to be convincing, it may not be proper to refuse to accept the report or to award compensation in spite of lack of materials to do so. But, at the same time, the petitioner as well as the detenu are not left out without any remedy for appropriate relief against such alleged brutal attack by respondents 5 to 7 and to claim compensation, if so advised, in accordance with law.

8. Therefore, as already stated, taking note of the fact that the detenu was in judicial custody and subsequently, he was enlarged on bail by an order of the learned Judicial Magistrate, Kumbakonam, dated 2.1.2007 and from then onwards, he was no more in prison nor was under any illegal custody, we feel that no further orders are required in this Habeas Corpus Petition except to give the liberty to the detenu to work out his rights seeking appropriate relief against such alleged brutal attack by respondents 5 to 7 and for claiming compensation, in the manner known to law, in which event, the concerned Court or Forum shall permit the detenu as well as the respondents to substantiate their respective case and pass appropriate orders on merits, without being prejudiced by the finding rendered by the learned District and Sessions Judge, Nagapattinam, in the report dated 16.3.2007 or by any of the observations made in any of the interim orders passed by this Court in the above H.C.P.

9. We also add that when a serious apprehension is projected on behalf of the detenu that the detenu will be subjected to encounter, it is also the duty of the State to remove such apprehension in the minds of any person to that extent. Reposing our strong confidence on the respondents police in this regard, we close the above Habeas Corpus Petition with the observations referred to above.

sra

WEB COPY

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Home Secretary,
   Secretariat, Fort St. George,
   Chennai.

2. The Director General of Police,
   Tamil Nadu Police Head Quarters,
   Kamarajar Salai, Chennai.

3. The Inspector General of Police,
   Trichy Region, Trichy.

4. The Inspector of Police,
   Thiruvarur Town Police Station,
   Thiruvarur Town.

5. The Inspector of Police,
   Kumbakonam Ease Police Station,
   Kumbakonam.

6. The Deputy Superintendent of Police,
   Anti Rowdy Cell, Trichy Region,
   I.G. Office, Trichy.

7. The Public Prosecutor,
   High Court, Madras.

+1 cc to Mr.I.P.Senthil Kumar, Advocate Sr.No.53337.

+1 cc to M/s.A.Madhumathi, Advocate Sr.No.52577.

BV(CO)
dcp/6.9 HCP No.1163 of 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/